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Attorneys for San Diego Unified School District

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

MILLER BROWN & DANNIS
SYMPHONY TOWERS
750 B STREET, SUITE 2310
SAN DIEGO, CA 92101

Tyler Brenneise, Allison Brenneise and Robert Brenneise, Plaintiffs, v. San Diego Unified School District, Defendant.	Case No. 08 CV 0028 WQH WMc **DECLARATION OF SARAH SUTHERLAND IN SUPPORT OF SAN DIEGO UNIFIED SCHOOL DISTRICT'S MOTION TO CONSOLIDATE CASE NO 08 CV 0039 WITH CASE NO 08 CV 0028** **Trial:** **none set**

I, Sarah Sutherland, declare:

1. I am an attorney at law duly licensed to practice before all courts of the State of California and am admitted to the United States District Court, Southern District of California. I am an associate with the firm of Miller Brown & Dannis, attorneys of record for San Diego Unified School District ("District"). The matters set forth below are of my own personal knowledge and if called as a witness I could and would competently testify thereto.

2. The District seeks consolidation of its action, *San Diego Unified School District v. T.B., a minor, Allison and Robert Brenneise, his parents, Steven Wyner and Wyner and Tiffany*, Case No. 08 CV 0039 L RBB, by way of a Motion to Consolidate, with the related case entitled *T.B., Allison Brenneise and Robert Brenneise v. San Diego Unified School District*, Case No. 08 CV 0028 WQH WMc.

3. I contacted Steven Wyner, counsel for the Brenneise family, himself, and Wyner

and Tiffany, seeking a stipulation to consolidation of these matters. Marcy Tiffany, an attorney with Wyner and Tiffany, responded on his behalf, indicating they were not willing to stipulate to consolidate the matters at this time. The District continues to believe early consolidation of these matters is in the best interests of the parties and judicial economy, based on the following.

4. Both actions involve the same parties, the same attorneys, the same time frame, the same law, the same underlying 27 day due process decision, and the same administrative record of that proceeding.

5. Both actions involve T.B., Allison Brenneise, Robert Brenneise and the San Diego Unified School District. Steven Wyner and Dana Wilkins of Wyner and Tiffany represented T.B., Allison Brenneise, and Robert Brenneise in the underlying due process hearing and Wyner and Tiffany represents them all in both pending federal actions. Elizabeth Estes and Sarah Sutherland of Miller Brown & Dannis represented the San Diego Unified School District in the underlying due process hearing and Amy Levine and Sarah Sutherland of Miller Brown & Dannis represent the San Diego Unified School District in both pending federal actions.

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6. The underlying due process hearing decision adjudicated two separate requests for due process: the first was filed by the District, entitled *San Diego Unified School District v. T.B.*, OAH Case No. N2006120002, and the second filed by T.B., entitled *T.B., Allison Brenneise and Robert Brenneise*, OAH Case No. N2007010848. The two separate requests were consolidated by the Office of Administrative Hearings ("OAH") at the request of T.B.. Adjudication of the consolidated due process requests occurred over 27 days of hearing, involving approximately 600 documentary exhibits and the testimony of approximately 32 witnesses.

7. Both pending federal actions seek review of that same consolidated underlying due process hearing regarding the District's obligations to T.B. under the Individuals with Disabilities Education Improvement Act ("IDEA"), 20 U.S.C. Sections 1400 *et seq.*, during the 2006-2007 school year. On January 4, 2008 at 4:28 p.m., T.B., Allison Brenneise and Robert Brenneise filed an appeal of that due process decision, pursuant to the IDEA, requesting judicial review of the OAH decision in the consolidated matters of *San Diego Unified School District v. T.B.*, OAH Case

No. N2006120002 and *T.B., Allison Brenneise and Robert Brenneise v. San Diego Unified School District*, OAH Case No. N2007010848 and a determination of reasonable attorneys' fees incurred, if any, which would qualify for fee shifting under the IDEA. On January 4, 2008, shortly after Case No. 08 CV 0028 was filed, the District sought review of the same underlying due process decision in the consolidated matters of *San Diego Unified School District v. T.B.*, OAH Case No. N2006120002 and *T.B., Allison Brenneise and Robert Brenneise v. San Diego Unified School District*, OAH Case No. N2007010848, and also sought determination of reasonable attorneys' fees incurred, if any, which would qualify for fee shifting under the IDEA. The District's filing was assigned Case No. 08 CV 0039.

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8. Both actions request determination of the San Diego Unified School District's obligations to T.B. under the IDEA and review of the District's discharge of those obligations during the 2006-2007 school year.

9. Both actions involve determination of the amounts of attorneys' fees and costs owed to the other party, if any, under the IDEA, 20 U.S.C. section 1415(i)(3).

10. Consolidation would not risk delaying trial because both actions were filed on the same day and answers are due in both actions on the same day pursuant to agreement between Steven Wyner and myself for the parties to simultaneously waive service.

11. Consolidation would prevent inconsistent adjudication of the same facts under the same law following the same due process hearing, and would not cause confusion or prejudice because of the cases' identical postures.

12. Consolidation would lessen the burden on all parties and on available judicial resources because all parties on each side are represented by the same counsel, and each party was represented by the same counsel in the underlying due process hearing.

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I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Executed on this 26th day of February, 2008 at San Diego, California.

Sarah L.W. Sutherland

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CERTIFICATE OF SERVICE

STATE OF CALIFORNIA)
) ss.
COUNTY OF SAN DIEGO)

I am employed in the County of San Diego, State of California. I am over the age of 18 and not a party to the within action; my business address is: Symphony Towers, 750 B Street, Suite 2310, San Diego, CA 92101.

On the date set forth below I served the foregoing document described as DECLARATION OF SARAH SUTHERLAND IN SUPPORT OF SAN DIEGO UNIFIED SCHOOL DISTRICT'S MOTION TO CONSOLIDATE CASE NO. 08 CV 0039 WITH CASE NO. 08 CV 0028 on plaintiffs by serving their counsel of record electronically, having verified on the court's CM/ECF website that such counsel is currently on the list to receive emails for this case, and that there are no attorneys on the manual notice list.

Dated: February 26, 2008

Janice Karr

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